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No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

THE HEPPENSTALL COMPANY,
Petitioner,

v.

WILLIAM A. MURPHY, MARVIN PEASE, WILLIAM ROGERS, EDWARD BANACHOSKI, ALBERT BETTS, WILLIAM FAHERTY, ALBERT CHRISTMAN, ROMAN KRYSINSKI, CHARLES MANJEROVIC, WALTER REGAN, JOHN AUSTIN, JR., FRANK CONIGLIO, FRANK KUSH, LAWRENCE WIESEN, JOHN CHMILL AND SIDNEY ROBINSON,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPENDICES
TO
PETITION FOR WRIT OF CERTIORARI

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May 8, 1981

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APPENDICES

Table of Contents

PAGE

A. Opinion of the Court of Appeals (Gibbons, Cir. J.) filed December 10, 1980 ..... 1a

B. Opinion of the District Court (Dumbauld, D. J.) (473 F. Supp. 783) filed, and Order entered, August 8, 1979 ..... 14a

C. Order of the District Court (Dumbauld, D. J.) entered April 1, 1980 ..... 19a

D. Order of the District Court (Dumbauld, D. J.) entered April 23, 1980 ..... 22a

E. Judgment of the Court of Appeals entered December 10, 1980 ..... 24a

F. Order of the Court of Appeals (Gibbons, Cir. J.) entered January 9, 1981, denying petition for rehearing 26a

G. The Employee Retirement Income Security Act of September 2, 1974, Pub. L. 93-406 (88 Stat. 832) as amended (29 U.S.C. §1001 ff.) 28a

Section 2 (29 U.S.C. §1001) 28a

Section 3 (29 U.S.C. §1002)
subsections (2) 30a
(3) 30a
(7) 30a
(11) 30a
(12) 31a
(16) 31a
(19) 31a
(31) 32a
(35) 32a

PAGE

Section 4 (29 U.S.C. §1003) 32a

Section 201 (29 U.S.C. §1051) 33a

Section 203 (29 U.S.C. §1053)
subsection (a), omitting paragraphs (1)-(3) .. 35a

Section 301 (29 U.S.C. §1081)
subsection (a) 35a

Section 302 (29 U.S.C. §1082)
subsection (a) 36a
subsection (c), paragraphs (1) and (3) 37a

Section 401 (29 U.S.C. §1101)
subsection (a), omitting exceptions 37a

Section 402 (29 U.S.C. §1102)
subsection (a), paragraph (1) 38a

Section 403 (29 U.S.C. §1103)
subsection (a), omitting paragraphs (1)-(2) .. 38a

Section 404 (29 U.S.C. §1104)
subsection (a), paragraph (1) 38a

Section 502 (29 U.S.C. §1132)
subsection (a), paragraphs (1)-(3) 39a
subsection (d) 40a
subsection (e), paragraph (1) 40a
subsection (f) 40a

Section 503 (29 U.S.C. §1133) 41a

Section 514 (29 U.S.C. §1144)
subsection (a) 41a
subsection (c), paragraph (1) 41a

Section 1011 in part 42a

Section 1012 in part 42a

Section 1013 in part 43a

Section 4001 (29 U.S.C. §1301)
subsection (a), paragraph (4) 44a

PAGE

Section 4002 (29 U.S.C. §1302)
subsection (a) 44a
subsection (b), paragraph (1) 45a

Section 4021 (29 U.S.C. §1321)
subsection (a) 45a

Section 4022 (29 U.S.C. §1322)
subsection (a) 46a

Section 4042 (29 U.S.C. §1342)
subsection (a), omitting last two sentences .. 46a
subsection (b), first sentence 47a
subsection (c), first and third sentences 47a

Section 4044 (29 U.S.C. §1344)
subsection (a), omitting paragraphs (1)-(6) .. 48a

Section 4061 (29 U.S.C. §1361) 48a

Section 4062 (29 U.S.C. §1362)
subsection (a), omitting exceptions 48a
subsection (b) 48a

Section 4067 (29 U.S.C. §1367) 49a

H. Internal Revenue Code of August 16, 1954 (68A Stat. 5, 26 U.S.C. §1 ff.) 50a

Section 401 (26 U.S.C. §401 as amended)
subsection (a), paragraphs (1)-(4) 50a

Section 411 (26 U.S.C. §411 as amended)
subsection (a), omitting paragraphs (1)-(10) 51a
subsection (d), paragraph (3), omitting last sentence 51a

Section 412 (a), (c) (26 U.S.C. 3412 as amended) 43a

Section 501 (29 U.S.C. §501 as amended)
subsection (a) 52a

Revenue Ruling 71-91, 1971-1CB 116 ..... 52a

IRS Pub. 778 (2-72)
Part 2(b) 53a

PAGE

I. Legislative History of ERISA (extracts)
1973
Jan. 3 House — Introduction of H.R. 2 ..... 55a
and H.R. 462 ..... 55a
section 204 of H.R. 462 ..... 56a
section 205 of H.R. 462 ..... 57a
section 206(a) of H.R. 462 ..... 57a
(I Leg. Hist. 1, 85-86)

Apr. 18 Senate — Report of Committee on Labor and Public Welfare to accompany S. 4 (extract) 58a
(I Leg. Hist. 587, 607, 612)

Aug. 21 Senate — Report of Committee on Finance on S. 1179 (extract) 61a
(I Leg. Hist. 1063, 1155)

Sept. 17 Senate — Amendment No. 496 to S. 4 section 462 ..... 63a
(I Leg. Hist. 1271, 1396)

Sept. 18 — Analysis of amendment No. 496 to S. 4 (extract) 64a
(II Leg. Hist. 1718, 1724)

Oct. 2 House — Report of Committee on Education and Labor to accompany H.R. 2 (extract) 65a
(II Leg. Hist. 2348, 2363; 3 U.S. Congr. & Adm. News 4639, 4654)

1974
Feb. 28 House — Floor debate
Mr. Price of Texas (extracts) 67a
(III Leg. Hist. 3505, 3583-3585)

May 12 House — Joint explanatory statement of the Committee of Conference (extract) 68a
(III Leg. Hist. 4518, 4642-4643)

PAGE

Aug. 22 Senate Submission of Conference Report on H.R. 2
Senator Williams (extracts) 70a
(III Leg. Hist. 4733, 4741-4742; 3 U.S. Congr. & Adm. News 5177, 5185)

J. Labor Contract dated August 25, 1975 between Heppenstall Company, for its plant located at Pittsburgh, Pennsylvania and Local Union 1601, The United Steelworkers of America
opening paragraph 71a
Section I 71a
Section VI
purpose 72a
arbitration 72a
Memorandum of Understanding re:
Pensions 73a

K. Pension Agreement effective August 16, 1976 between Heppenstall Company and United Steelworkers of America
Section 1.1 (a), (c), (e) 74a
Section 1.3 ..... 75a
Section 8.1 ..... 75a
Section 10.2 ..... 75a

L. Amendment to Pension Agreement
first two paragraphs 76a
Section 5 ..... 76a

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1690 and 80-1724

WILLIAM A. MURPHY, MARVIN PEASE, WILLIAM ROGERS, EDWARD BANACHOSKI, ALBERT BETTS, WILLIAM FAHERTY, ALBERT CHRISTMAN, ROMAN KRYSINSKI, CHARLES MANJEROVIC, WALTER REGAN, JOHN AUSTIN, JR., FRANK CONIGLIO, FRANK KUSH, LAWRENCE WIESEN, JOHN CHMILL AND SIDNEY ROBINSON

v.

THE HEPPENSTALL COMPANY,
Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(D.C. Civil No. 79-0817)

Argued October 14, 1980

Before GIBBONS and ROSENN, *Circuit Judges*, and HANNUM*, *District Judge*

(Opinion Filed December 10, 1980)

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* Honorable John B. Hannum, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

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OPINION OF THE COURT

GIBBONS, *Circuit Judge.*

Heppenstall Company (the employer) appeals from a grant of partial summary judgment in favor of sixteen retired Heppenstall employees (the employees). The employees sought directly from the employer the difference between the pension payments guaranteed by the Pension Benefit Guaranty Corporation (PBGC), and those

provided in the pension agreement negotiated between the employer and the United Steel Workers of America (the Agreement). Finding nothing in the Employee Retirement Income Security Act (ERISA) 29 U.S.C. §1001 et seq., to preempt contract claims against the employer for pension benefits in excess of those guaranteed by PBGC, we affirm.

I. *Facts and Proceedings Below*

The underlying facts are the same as in *Pension Benefit Guaranty Corp. v. Heppenstall Co.*, No. 79-2225, decided by this court July 30, 1980. In the present action, 16 retired employees brought their contract-based pension benefits claim to the district court two weeks before that court issued its order terminating the employees' pension plan. Invoking 29 U.S.C. §1132(e) jurisdiction over actions to enforce rights under a pension plan, the employees argued the terms of the pension agreement obligated the employer itself, rather than a fund or an insurer, to pay pension benefits even after termination or expiration of the agreement.

The employer moved to dismiss, urging that the pension agreement did not make Heppenstall directly liable for pension benefits to its employees, that any claim for pension benefits must either be arbitrated, or be resolved in the proceeding terminating the pension plan, and that ERISA preempts contract claims against the employer for sums in excess of those guaranteed by the PBGC. The district court denied the motion to dismiss, and granted partial summary judgment for the employees, postponing the determination of amounts due the employees, but certifying that the summary judgment of liability was a controlling question which should be reviewed pursuant to 28 U.S.C. §1292(b).[1]

1. In issuing the §1292(b) order, the court ruled:

said orders involve a controlling question of law as to which there is a substantial ground for difference of opinion and that

II. *Discussion*

The disputed portion of the Heppenstall-United Steelworkers pension agreement provides:

> Section 10.2
>
> Any benefit properly payable pursuant to this Agreement shall continue to be payable, notwithstanding the termination or expiration of this Agreement.
>
> In the event that this Agreement is terminated, in whole or in part, the rights of any participant with respect to whom such termination shall have occurred shall, from the date of such termination or partial termination, be fully vested and nonforfeitable, subject to divestment by reason of death or operation of law, in the benefits established under the Agreement as of the date of such termination or partial termination is effective to the extent those benefits are funded by the Company in accordance with the provisions of Section 8 of this Agreement.

NOTE 1 — *(Continued)*

an immediate appeal from said orders may materially advance the ultimate termination of the litigation, for if this Court's conclusion that the instant case is independent of the proceedings involving the Pension Benefit Guaranty Corporation is incorrect, and defendant's position is sustained that plaintiffs have no remedy except such as may be obtained in the proceedings at Nos. 79-2224 and 2225, the instant case would be immediately terminated without need to complete the calculations of the amounts payable to each employee entitled to pension benefits under the collectively bargained contract.

On a Section 1292(b) appeal we consider all grounds which might require a reversal of the order appealed from. *McCreary Tire & Rubber Co. v. CEAT S.p.A.*, 501 F.2d 1032 (3d Cir. 1974); *Katz v. Carte Blanche Corp.*, 496 F.2d 747 (3d Cir.) (in banc), *cert. denied*, 419 U.S. 885 (1974); *Johnson v. Aldredge*, 448 F.2d 820 (3d Cir. 1973), *cert. denied sub nom. Conrath v. Johnson*, 419 U.S. 882 (1974).

Section 8.1 reads:

> For the purpose of supplying the pension benefits herein provided, the Company may establish or cause to be established, a pension trust or trusts or may utilize any existing trust or trusts heretofore established by or on behalf of the Company. The Company is free to determine the manner and means of making provision for funding and paying the pension benefits set forth in this Agreement.

The employer asserts the second sentence of Section 10.2 limits its direct liability to its employees. This sentence, however, added to conform to Internal Revenue Service-ERISA statutory vesting and funding standards, simply determines when participants' rights shall have vested in the event of termination of the pension plan. The "is effective" clause, on which the employer relies to limit liability, has no syntactical correspondent. Even were the verb plural, it would still fail to modify the right to receive benefits. We read the collection of clauses to mean: on the date the agreement terminates, participants' rights to benefits under the Agreement vest fully, to the extent the Company has funded the benefits, as provided in Section 8.

Read this way, Section 10.2 might at first seem to take away what it gives: participants' rights vest "fully," but if the employer fails to fund a pension trust, participants have fully vested rights in scant benefits. In fact, however, the employees have rights to benefits under the Collective Bargaining Pension Agreement, not merely under a pension trust. Section 8.1 establishes that the employer may set up a pension trust, and fund it as he wills, but the provision does not confine the employer's liability for pension benefits to a pension trust. Section 8.1, then, does not oblige the employer to fund any trust; the employer could be directly liable for all pension payments due under the Agreement. Read together, Sections 8.1 and 10.2 thus confirm the employer's con-

tinuing direct liability for post-termination pension payments.[2]

The employer also relies on the pension Agreement's arbitration clause to maintain the employees may not bring their pension benefits claim in court. The arbitration clause, however, governs disputes concerning an employee-applicant's right to a pension, or the amount of a pension. This action does not address a dispute over these employees' rights under the pension agreement. The plaintiffs in this action are retired employees; their rights have already vested. This action instead concerns the enforceability of the Agreement's direct liability clause. If the clause is enforceable, the employees rights under it are clear.[3]

The employer's remaining arguments center on interpretation of several sections of ERISA. The employer

---

2. In addition, Section 1.3 of the Agreement provides:

> Subject to the corporate actions required to provide the pension benefits and to the Company's obtaining and/or retaining [favorable tax treatment for the plan], the following pension benefits shall be provided by the Company or caused to be provided by the Company for the participants.

The second sentence of Section 10.2 details one of the corporate actions requisite to retaining favorable tax treatment. Section 1.3 thus makes clear that the disputed sentence in Section 10.2 was never meant to divest retirees of their pension payments.

3. The arbitration clause provides:

> If any difference shall arise between the Company and any participant who shall be an applicant for a pension as to such participant's right to a pension or the amount of his pension and agreement cannot be reached between the Company and a representative of the International Union, such question shall be referred to an impartial umpire to be selected by the Company and the Union. The impartial umpire shall have authority only to decide the question pursuant to the provisions of this agreement applicable to the question — but he shall not have authority in any way to alter, add to or subtract from any of such provisions. The decision of the impartial umpire on any such question shall be binding on the Company, the Union and the participant.

maintains 29 U.S.C. §1342(f) mandates the employee's pension benefits claim be adjudicated solely in the pension plan termination proceeding. Section 1342(f) states:

> Exclusive Jurisdiction; stay of other proceedings:
>
> (f) Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of bankruptcy and of a court in a proceeding under Chapter X of Title II. Pending an adjudication under subsection (c) of this section such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

By its own terms, Section 1342(f) does not apply to this action. The employees are not suing the pension plan. They are suing the employer for the difference between payments due under the pension plan, as guaranteed by the PBGC, and payments due directly from the employer under the collectively bargained pension Agreement. The sole defendant, and the sole source of the employees' recovery in this action is the employer.[4]

4. The employer has argued the PBGC and the pension plan are indispensible parties to this action. On our reading of the pension Agreement and our disposition of the employer's argument under §1342(f) it is unnecessary to join either the PBGC or the pension plan

Finally, the employer asserts ERISA preempts contract claims for benefits in excess of those guaranteed by the PBGC. The employer's statutory argument is three-fold. The employer maintains 29 U.S.C. §1144, ERISA's preemption section, limits employees' rights in pension benefits to those rights ERISA creates. The employer further argues that 29 U.S.C. §§1362 and 1322 place a cap on, respectively, the employer's liability for pension benefits, and the employees' right to receive employer-funded benefits. Neither the words of the statute, nor its legislative history warrant these conclusions.

29 U.S.C. §1144 supercedes "state law relating to" a pension plan.[5] The employees' contract claim against the employer is not a state law claim. Rather, their claim arises under both the federal common law of labor-management contracts, and the federal common law of pension plans. Because the employees are seeking to enforce a provision of a collectively bargained pension agreement, federal common law applies. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456-57 (1957) (the broad jurisdictional grant of §301(a) of the Taft-Hartley Act, 29 U.S.C. §185(a) authorizes creation of federal common law of labor-management contracts); *Sheeran v. General Electric Co.*, 593 F.2d 93, 96 (9th Cir. 1977) (individual employees may bring suit in federal court for breach of collective bargaining agreement).

Moreover, except for explicitly exempted plans, ERISA wholly regulates and federalizes the pension field. Section 1144 preempts any state law relating to

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5. 29 U.S.C. §1144 provides:

§1144 Other laws

Supercedure; effective date

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title. This section shall take effect on January 1, 1975.

ERISA-covered pension plans. Furthermore, like the Taft-Hartley Act grant of jurisdiction over labor-management contracts, ERISA in Section 1132(a) and (e) confers jurisdiction over actions concerning rights and benefits under a pension plan. In enacting ERISA, Congress authorized the evolution of a federal common law of pension plans. *See* ERISA Conference Report, remarks of Senator Javits: "It is also intended that a body of federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans." III Leg. Hist. of the Employees Retirement Income Security Act of 1974, 4771; *In Re C.D. Moyer Trust Fund*, 441 F. Supp. 1128, 1131 (E.D. Pa. 1977) ("under ERISA's legislative scheme, this court is empowered to formulate rules of law to govern various aspects of the employee benefit field," citing Sen. Javits' remarks), *aff'd without opinion*, 582 F.2d 1273 (3d Cir. 1978). Thus Section 1144 does not preempt direct employer liability under a pension agreement. We must therefore determine if that liability is inconsonant with some other facet of the statutory scheme.

The employer maintains the federally insured pension benefits set out in Title IV of ERISA, 29 U.S.C. §§1301-81, afford employees all the pension rights to which they are entitled. Any benefits in excess of the statutory provisions, it urges, would be inconsistent with the Congressional program of limiting employer liability for pension benefits. The employer misreads the plain wording of the statute, and misconstrues the legislative purpose motivating its enactment. Sections 1362 and 1322, which the employer invokes as expressions of Congressional intent to limit employer liability, in no way address pension benefits directly recoverable from the employer. Section 1362(b) does place a ceiling on employer liability for pension payments, but that liability

is to the PBGC.[6] Similarly, Section 1322(a)(b)(1)(2)(3) limits the pension payments employees may recover from the PBGC[7]. Two lower federal courts have expressly held that the limitation in Section 1362 of employer liability to the PBGC does not limit the employer's direct contractual liability to its employees. *In The Matter of M & M Transportation Company*, No. 79 Civ. 5968 (S.D.N.Y. April 16, 1980), Pension and Profit Sharing (P-H) ¶ 135,497 (5/30/80); *In Re Alan Wood Steel Co.*, Bankruptcy No. 77-930 (E.D. Pa. 1978), 212 BNA Pension Reporter D-1 (10/30/78).

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6. Section 1362(b) reads:

Amount of Liability

(b) Any employer to which this section applies shall be liable to the corporation, in an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this subchapter on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

7. Section 1322(a) and (b)(1)(2)(3) read:

Benefits guaranteed

(a) Subject to the limitations contained in subsection (b) of this section, the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 1321 of this title applies to it.

(b) (1) Except to the extent provided in paragraph (8)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became

In *Nachman Corp. v. PBGC*, 48 U.S.L.W. 4524 (5/13/80), the Supreme Court reviewed Congress' concerns in enacting ERISA:

> One of Congress' central purposes in enacting this complex legislation was to prevent the "great personal tragedy" suffered by employees whose vested benefits are not paid when pension plans are terminated. Congress found "that owing to the inadequacy of current minimum standards, the

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effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 1321(a) of this title) has been in effect includes the time a previously established plan (within the meaning of section 1321(a) of this title) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 1321 of this title does not apply on September 3, 1974, the 60 month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) of this section provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 430 of Title 42) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits.

> soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits." ERISA §2(a), 29 U.S.C. §1001(a). Congress wanted to correct this condition by making sure that if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—that he actually receive it. The termination insurance program is a major part of Congress' response to the problem. Congress provided for a minimum funding schedule and prescribed standards of conduct for plan administrators to make as certain as possible that pension fund assets would be adequate. But if a plan nonetheless terminates without sufficient assets to pay all vested benefits, the PBGC is required to pay them—within certain dollar limitations not applicable here—" from funds established by that corporation. [footnotes omitted]

48 U.S.L.W. at 4528. Under 29 U.S.C. §1362(b), the PBGC can recover from the terminating employer up to 30% of its net worth in order to defray the costs of compensating retired employees.

The *Nachman* Court held that an employer's limitation of liability to sums within a pension fund did not eliminate the PBGC's guaranty of accrued, unfunded benefits. Had Nachman Corporation's interpretation prevailed, the PBGC would not have been obliged to pay pension claims, and thus could not have proceeded against Nachman for 30% of its net worth. The Court did not, however, rule that ERISA prohibited any disclaimer of direct liability. Rather, it maintained, the 30% reimbursement provision demonstrated Congress' intention to preserve employers' "right to place a contractual limit on their direct liability to their employees.." 48

U.S.L.W. at 4531. If the employer may limit direct liability, direct liability must persist under ERISA. Otherwise *Nachman* would nonsensically permit restrictions on a form of liability the statute had precluded.

ERISA established "minimum standards" for pension payments due retired employees. Congress endeavored to guarantee retirees at least a portion of the payments a terminated pension plan would have afforded. It is not inconsistent with the statutory scheme to permit employees to recover directly from the employer any additional benefits to which the employer has contractually obligated itself. While the effect of permitting that additional recovery may reduce the employer's net worth, and thus decrease the amount the PBGC may recover from the employer, the PBGC in its amicus brief to this court has taken a position supporting the employees' right to recover directly from the employer. Because nothing in ERISA, nor in its legislative history, nor in the views expressed by the government corporation charged with administering ERISA-guaranteed pension payments discountenances direct contractual recovery of pension benefits from the employer, we will affirm the district court's grant of summary judgment of liability in favor of the employees.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

B OPINION OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM A. MURPHY, et al.,
Plaintiffs,
v.
THE HEPPENSTALL COMPANY,
Defendant.

Civil Action
No. 79-817 Q.
Aug. 8, 1979.

William H. Powderly, III, Reed, Smith, Shaw & McClay, Pittsburgh, Pa., for defendant.

Frank J. Lucchino, Pittsburgh, Pa., for plaintiffs.

OPINION

DUMBAULD, District Judge.

Plaintiffs are retired employees of defendant Heppenstall Company who had been receiving pension benefits until defendant's financial position became straitened and payments stopped. In a cognate case this Court by order of June 28, 1979, in No. 78-1431 terminated defendant's plan in pursuance of ERISA, and benefits guaranteed under that statute will be paid to defendant's employees by the Pension Benefit Guaranty Corporation. Any recovery from defendant would be of course diminished by such amounts, if any, as may be paid by PBGC. Defendant moves to dismiss or refer to arbitration, relying on the policy in favor of labor arbitration enunciated in the *Steel Trilogy* and other cases.

The *sedes materiae* of plaintiffs' claim is found in Section 1.3 of the pension agreement between defendant and Local 1601 of the United Steelworkers (Ex. 1 to Motion). It is there agreed that "Subject to the corporate

action required to provide the pension benefits [and to IRS approval; and it is not disputed that these conditions have been complied with[1]] the following pension benefits shall be provided by the Company or caused to be provided by the Company for the participants."[2]

Section 7.1 provides that:

> If any difference shall arise between the Company and any participant who shall be an applicant for a pension as to such participant's right to a pension or the amount of his pension [an impartial umpire shall decide] pursuant to the provisions of this agreement.

Section 8.1 reads:

> For the purpose of supplying the pension benefits herein provided, the Company may establish or cause to be established, a pension trust or trusts or may utilize any existing trust or trusts heretofore established by or on behalf of the Company. The Company is free to determine the manner and means of making provision for funding and paying the pension benefits set forth in this Agreement.[3]

Section 10.2 of both agreements provides:

> Any benefit properly payable pursuant to this Agreement shall continue to be payable, notwithstanding the termination or expiration of this Agreement.

An amendment required by IRS to conform to ERISA added a new sentence to Section 10.2:

> In the event that this Agreement is terminated, in whole or in part, the rights of any participant

---

1. Section 10.7 provides that in the absence of compliance with these conditions the Union shall be free to strike "with respect to matters relating to pensions only." This shows that the pension agreement is a collectively bargained labor agreement.

2. An identical Section 1.3 is contained in the agreement with Local 7378 (Ex. 3).

3. Ex. 1. This provision is identical in Ex. 3.

> with respect to whom such termination shall have occurred shall, from the date of such termination or partial termination, be fully vested and nonforfeitable, subject to divestment by reason of death or operation of law, in the benefits established under the Agreement as of the date of such termination or partial termination is effective to the extent those benefits are funded by the Company in accordance with the provisions of Section 8 of this Agreement.

Defendant contends that it is not liable for any benefits in excess of those payable from the (now exhausted) trust fund which it established. The fund consisted only of "such sums of money and other property . . . as shall from time to time be paid or delivered to such Trustee in accordance with the provisions of the Plan." Section 1.1, Ex. 8. The trustee has no right or duty to require payment of any contribution. Section 2.1. The Trustee merely administers pursuant to the Plan whatever amounts defendant puts into the fund.

It is of course true that an employer is free (apart from any requirements which ERISA may have imposed) to limit its liability for pensions to a particular fund. *Boase v. Lee Rubber & Tire Corp.*, 437 F.2d 527, 528-29 (C.A. 3, 1970); *Baake v. Gen. Am. Transp. Corp.*, 351 F.Supp. 962, 964 (N.D.Ill. E.D. 1972); *Briggs v. Michigan Tool Co.*, 369 F.Supp. 920, 924 (E.D.Mich. S.D. 1974). However, the language used for the employers' limitation of liability in those cases is much clearer than that used by defendant in the agreements under consideration in the case at bar.

Defendant squarely agreed that the stipulated benefits were to be "provided . . . or caused to be provided" by defendant. It was free either to employ a funded trust or to make direct payments, as it might see fit. It is nowhere stated that the only benefits for which defendant is to be

liable are those derivable from the assets of the trust fund.

Plaintiffs are suing on defendant's contractual agreement, in what would have been an action of *indebitatus assumpsit* at common law. If defendant becomes a bankrupt plaintiffs could claim as unsecured creditors for non-performance of liability contracted for under the agreement.

Nor can defendant rely on the IRS-required amendment to Section 10.2 as an exculpatory clause. That amendment simply provides, giving effect to ERISA, that rights of participants shall become vested and nonforfeitable upon termination of the agreement to the extent that fund assets are available. This has no application to plaintiffs whose pension rights had previously been consummated upon actual retirement.

In spite of the policy in favor of Labor arbitration, the scope of arbitration is governed by the particular language used in the arbitration clause. It seems plain that the clause here does not cover plaintiffs' claim of assumpsit. The arbitration clause is limited in regard to parties and subject-matter to (1) disputes between defendant and an "applicant for a pension" [plaintiffs are not applicants, they have been receiving pensions while the payments continued]; (2) disputes as to a participant's "right to a pension or the amount of his pension" [here there is no such dispute; the problem is simply one of non-payment of the amount due].

Accordingly, defendant's motion must be denied. Plaintiffs' action for breach of contract must proceed to trial in due course.

ORDER

AND NOW, this 8th day of August, 1979, for the reasons set forth in the foregoing opinion, it is ordered that defendant's motion to dismiss or for arbitration be and the same hereby is denied.

Dumbauld
UNITED STATES SENIOR
DISTRICT JUDGE

Copies to:

Stephen D. Schreiber, Esquire
Pension Benefits Guaranty Corp.
2020 K Street, NW
Washington, D.C. 20006

William H. Powderly, III, Esquire
Reed Smith Shaw & McClay
P.O. Box 2009 (15230)

Daniel P. McIntyre, Esquire
United Steelworkers of America
Five Gateway Center (15222)

Frank J. Lucchino, Esquire
Suite 1204 Lawyers Bldg. (15219)

C ORDER OF THE DISTRICT COURT ENTERED APRIL 1, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM A. MURPHY, et al., Plaintiffs v. THE HEPPENSTALL COMPANY, Defendant.	Civil Action No. 79-817

ORDER

AND NOW, this April 1, 1980, upon consideration of defendant's motion to dismiss for lack of jurisdiction and upon other grounds, and of plaintiffs' motion for summary judgment, and of briefs in support thereof, and in opposition thereto, after argument, and the Court being of opinion that 29 U.S.C. 1132(*f*) grants to district courts "jurisdiction without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action;" and that 29 U.S.C. 1132(a)(1)(B) provides that a civil action may be brought by a participant or beneficiary of a plan "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his right to future benefits under the terms of the plan;" and that no limitation is imposed by said language with respect to the defendants against whom or which such action may be brought, and hence such an action in an appropriate case might be brought against an employer corporation rather than against the plan as an entity or a trustee; and that the contractual benefit provisions upon which plaintiffs rely constitute a "plan" within the meaning of 29 U.S.C. 1002(2) and (3); and that accordingly, this Court has jurisdiction of the instant case and that defendant's motion to dismiss for

lack of jurisdiction should be denied; and that defendant's other grounds have been ruled upon in this Court's opinion of August 8, 1979 [473 F.Supp. 783] defendant's pending motion to reconsider which is hereby denied, and hence that defendant's motion to dismiss should be denied, and plaintiffs' request at oral argument to withdraw pending motion to amend is hereby granted; and the Court being further of opinion, with respect to plaintiffs' motion for partial summary judgment that the case is one based upon the construction of written documents which are before the Court and that there are no disputed matters nor any genuine issue as to any material fact requiring additional testimony or proof with respect to liability; and the Court being of opinion, for the reasons set forth in 473 F.Supp. 783, that the moving party is entitled to judgment as a matter of law on the issue of liability;

IT IS ORDERED, ADJUDGED, DECREED, AND FINALLY DETERMINED that defendant's motion to dismiss be and the same hereby is denied; that plaintiffs' motion for partial summary judgment be and the same hereby is granted; and that judgment be and it hereby is entered for the plaintiffs and against the defendant for such sums as each plaintiff individually is entitled to pursuant to the terms of the applicable contracts providing for pension benefits; provided that the Court reserves jurisdiction to determine the precise dollar amounts payable under the judgment in accordance with the circumstances established with respect to each individual entitled to pension benefits, and counsel are urged to stipulate the amounts so payable; and the Court further reserves the right to stay execution with respect to the particular amounts as may hereafter be determined, to the extent necessary to prevent double recovery in the event that part of such amounts so payable shall have been paid to plaintiffs by Pension Benefit Guarantee Corporation or any other person than defendant, and defend-

ant shall be given credit against the judgment for any sums so paid to plaintiffs from collateral sources.

Dumbauld
UNITED STATES SENIOR
DISTRICT JUDGE

Copies to:

Frank J. Lucchino, Esq.
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William H. Powderly, III Esq.
Reed Smith Shaw & McClay (15230)

Stephen D. Schreiber, Esq.
Pension Benefit Guaranty Corp.
Office of the General Counsel
2020 K St. NW
Washington, D.C. 20006

D ORDER OF THE DISTRICT COURT ENTERED APRIL 23, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM A. MURPHY, et al.,
Plaintiffs,
v.
HEPPENSTALL COMPANY,
Defendant.

Civil Action
No. 79-817

ORDER

AND NOW, this 23rd day of April, 1980, upon consideration of defendant's motion to certify this Court's orders of August 8, 1979, and April 1, 1980, for appeal under 28 U.S.C. 1292(b); and this Court being of opinion that said orders constitute a final judgment in favor of plaintiffs except for calculations of the amounts due in an action of contract against the sponsor of a pension benefit plan [see 473 F.Supp. 783]; and this Court having in said orders rejected defendant's contention that this Court lacks jurisdiction of the instant case upon the ground that recovery of pension benefits can be had only against the plan itself and to the extent of its assets together with such benefits as may be provided by the Pension Benefit Guaranty Corporation in another proceeding now on appeal as Nos. 79-2224 and 2225, wherein this Court made a determination of involuntary determination under 29 U.S.C. 1342 in its order of *June 28, 1979,* at No. 78-1431; and this Court having likewise rejected defendant's contention that said Pension Benefit Guaranty Corporation is an indispensable party to the instant case; and this Court being of opinion that said orders involve a controlling question of law as to which there is a substantial ground for difference of opinion and that an

immediate appeal from said orders may materially advance the ultimate termination of the litigation, for if this Court's conclusion that the instant case is independent of the proceedings involving the Pension Benefit Guaranty Corporation is incorrect, and defendant's position is sustained that plaintiffs have no remedy except such as may be obtained in the proceedings at Nos. 79-2224 and 2225, the instant case would be immediately terminated without need to complete the calculations of the amounts payable to each employee entitled to pension benefits under the collectively bargained contract.

IT IS ORDERED that said orders of August 8, 1979, and April 1, 1980, be supplemented by adding thereto and incorporating therein the statements contained in this order.

Dumbauld
UNITED STATES SENIOR
DISTRICT JUDGE

Copies to:

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E JUDGMENT OF THE COURT OF APPEALS ENTERED DECEMBER 10, 1980

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Nos. 80-1690 and 80-1724

WILLIAM A. MURPHY, MARVIN PEASE, WILLIAM ROGERS, EDWARD BANACHOSKI, ALBERT BETTS, WILLIAM FAHERTY, ALBERT CHRISTMAN, ROMAN KRYSINSKI, CHARLES MANJEROVIC, WALTER REGAN, JOHN AUSTIN, JR., FRANK CONIGLIO, FRANK KUSH, LAWRENCE WIESEN, JOHN CHMILL AND SIDNEY ROBINSON

vs.

THE HEPPENSTALL COMPANY, Appellant

(D.C. Civil No. 79-0817)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Present: GIBBONS and ROSENN, *Circuit Judges* and HANNUM, *District Judge**

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel on October 14, 1980.

* Honorable John B. Hannum, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, entered April 1, 1980, be, and the same is hereby affirmed. Costs taxed against appellant.

ATTEST:
M. Elizabeth Ferguson
Chief Deputy Clerk

December 10, 1980

F ORDER OF THE COURT OF APPEALS ENTERED JANUARY 8, 1981

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Nos. 80-1690 and 80-1724

WILLIAM A. MURPHY, MARVIN PEASE, WILLIAM ROGERS, EDWARD BANACHOSKI, ALBERT BETTS, WILLIAM FAHERTY, ALBERT CHRISTMAN, ROMAN KRYSINSKI, CHARLES MANJEROVIC, WALTER REGAN, JOHN AUSTIN, JR., FRANK CONIGLIO, FRANK KUSH, LAWRENCE WIESEN, JOHN CHMILL AND SIDNEY ROBINSON v. THE HEPPENSTALL COMPANY, Appellant	(D.C. Civil No. 79-0817)

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, *Circuit Judges*

The petition for rehearing filed by
Appellant

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the

decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

John J. Gibbons
Judge

Dated: January 9, 1981

G THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

RETIREMENT INCOME SECURITY ACT P.L. 93-406 TITLE I-PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE A -GENERAL PROVISIONS

FINDINGS AND DECLARATION OF POLICY

Sec. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retire-

ment benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desireable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

DEFINITIONS

Sec. 3. For purposes of this title:

* * *

(2) The terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

* * *

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

* * *

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry "affecting commerce" within the meaning of Labor Management Relations Act, 1947,[2] or the Railway Labor Act.[3]

• • •

(16) (A) The term "administrator" means—

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

• • •

(19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an

2 29 U.S.C.A. 141 et seq.

3 45 U.S.C.A. 151 et seq.

immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 203(a)(3).

* * *

(31) The term "advance funding actuarial cost method" or "actuarial cost method" means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

* * *

(35) The term "defined benefit plan" means a pension plan other than an individual account plan;. . .

* * *

COVERAGE

Sec. 4. (a) Except as provided in subsection (b) and in section 201, 301, and 401, this title shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this title shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 3(32));

(2) such plan is a church plan (as defined in section 3(33)) with respect to which no election has been made under section 410(d) of the Internal Revenue Code of 1954;[12]

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 3(36)) and is unfunded.

• • •

SUBTITLE B - REGULATORY PROVISIONS

• • •

PART 2 - PARTICIPATION AND VESTING COVERAGE

Sec. 201. This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)) other than—

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12 26 U.S.C.A. (I.R.C. 1954) 410(d).

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(3)(A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1954,[19] if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c)(18) of such Code;

(4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of the Internal Revenue Code of 1954 and which does not at any time after the date of enactment of this Act provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of the Internal Revenue Code of 1954;

(6) an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code;[20] or

(7) an excess benefit plan.

* * *

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19 26 U.S.C.A. (I.R.C. 1954) 501(c)(8), (9).

20 26 U.S.C.A. (I.R.C. 1954) 408, 409.

MINIMUM VESTING STANDARDS

Sec. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

[paragraphs (1) - (3) omitted]

* * *

PART 3—FUNDING COVERAGE

Sec. 301. (a) This part shall apply to any employee pension benefit plan described in section 4(a), (and not exempted under section 4(b)), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b);

(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(4)(A) a plan which is established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1954,[33] if no part of the contributions to or under such plan are made by employers of participants in such plan; or

(B) a trust described in section 501(c)(18) of such Code;[34]

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33 26 U.S.C.A. (I.R.C. 1954) 501(c)(8).

34 26 U.S.C.A. (I.R.C. 1954) 501(c)(18).

(5) a plan which has not at any time after the date of enactment of this Act provided for employer contributions;

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of the Internal Revenue Code of 1954;[35]

(7) an individual retirement account or annuity as described in section 408(a) of the Internal Revenue Code of 1954,[36] or a retirement bond described in section 409 of such Code;[37]

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 3(35)(B) of this title; or

(9) an excess benefit plan.

* * *

MINIMUM FUNDING STANDARDS

Sec. 302. (a)(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 305) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

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35 26 U.S.C.A. (I.R.C. 1954) 736.

36 26 U.S.C.A. (I.R.C. 1954) 408(a).

37 26 U.S.C.A. (I.R.C. 1954) 409.

(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

• • •

(c)(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

• • •

(3) For purposes of this part, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

• • •

PART 4 - FIDUCIARY RESPONSIBILITY COVERAGE

Sec. 401. (a) This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)), other than—

[exceptions omitted]

• • •

ESTABLISHMENT OF PLAN

Sec. 402. (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

• • •

ESTABLISHMENT OF TRUST

Sec. 403. (a) Except as provided in subsection (b), all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 402(a) or appointed by a person who is a named a fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that—
[paragraphs (1)-(2) omitted].

• • •

FIDUCIARY DUTIES

Sec. 404. (a)(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with

such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

• • •

PART 5 - ADMINISTRATION AND ENFORCEMENT

• • •

CIVIL ENFORCEMENT

Sec. 502. (a) A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

• • •

(d) (1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(e) (1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of contempt jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

• • •

(f) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

• • •

CLAIMS PROCEDURE

Sec. 503. In accordance with regulations of the Secretary, every employee benefit plan shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

• • •

EFFECT ON OTHER LAWS

Sec. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

• • •

(c) For purposes of this section:

(1) The term "State Law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

• • •

TITLE II - AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

• • •

Subtitle A - Participation, Vesting Funding, Administration, Etc.

PART I - PARTICIPATION, VESTING AND FUNDING

Sec. 1011. MINIMUM PARTICIPATION STANDARDS

Part I of subchapter D of chapter 1[84] (relating to pension, profit-sharing, stock bonus, plans, etc.) is amended by adding at the end thereof the following:

"Subpart B—Special Rules

"Sec. 410. Minimum participation standards.

"Sec. 411. Minimum vesting standards.

"Sec. 412. Minimum funding standards.

"Sec. 413. Collectively bargained plans.

"Sec. 414. Definitions and special rules.

"Sec. 415. Limitations on benefits and contributions under qualified plans.

• • •

SEC. 1012 MINIMUM VESTING STANDARDS

(a) In general -Subpart B of part I of subchapter D of chapter 1[86] is amended by adding after section 410 the following new section:

"Sec. 411. MINIMUM VESTING STANDARDS

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84 26 U.S.C.A. (I.R.C. 1954) 401 et seq.

86 26 U.S.C.A (I.R.C. 1954) 410 et.seq.

SEC. 1013. MINIMUM FUNDING STANDARDS.

(a) In general.—Subpart B of part I of subchapter D of chapter 1[91] is amended by adding after section 411 the following new section:

"SEC. 412. MINIMUM FUNDING STANDARDS.

"(a) General rule.—Except as provided in subsection (h), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

"(1) such plan included a trust which qualified (or was determined by the Secretary or his delegate to have qualified) under section 401(a), or

"(2) such plan satisfied (or was determined by the Secretary or his delegate to have satisfied) the requirements of section 403(a) or 405(a).

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year, the plan does not have an accumulated funding deficiency . . .

* * *

"(c) Special rules.—

"(1) Determinations to be made under funding method.—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

* * *

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91 26 U.S.C.A. (I.R.C. 1954) 410 et seq.

"(3) Actuarial assumptions must be reasonable.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

• • •

TITLE IV - PLAN TERMINATION INSURANCE
Subtitle A - Pension Benefit Guaranty Corporation

DEFINITIONS

Sec. 4001. (a) For purposes of this title, the term—

• • •

(4) "corporation", except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 4002;

• • •

PENSION BENEFIT GUARANTY CORPORATION

Sec. 4002. (a) There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this title, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this title, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this title applies, and

(3) to maintain premiums established by the corporation under section 4006 at the lowest level consistent with carrying out its obligations under this title.

(b) To carry out the purposes of this title, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act and, in addition to any specific power granted to the corporation elsewhere in this title or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

• • •

Subtitle B - Coverage

PLANS COVERED

Sec. 4021. (a) Except as provided in subsection (b), this section applies to any plan (including a successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 3 of this Act) established or maintained-

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code

of 1954[23] (as in effect for the preceding 5 plan years of the plan) applicable to plans described in paragraph (2) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of the Internal Revenue Code of 1954,[24] or which meets or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of such Code.[25]

For purposes of this title, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

* * *

BENEFITS GUARANTEED

Sec. 4022. (a) Subject to the limitations contained in subsection (b), the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 4021 applies to it.

* * *

SUBTITLE C - TERMINATIONS

* * *

TERMINATION BY CORPORATION

Sec. 4042. (a) The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

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23 26 U.S.C.A. (I.R.C. 1954) 401 et seq.
24 26 U.S.C.A. (I.R.C. 1954) 401(a).
25 26 U.S.C.A. (I.R.C. 1954) 404(a)(2).

(1) the plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code of 1954,[37] or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of such Code[38] has been mailed with respect to the tax imposed under section 4971(a) of such Code,[39]

(2) the plan is unable to pay benefits when due,

(3) the reportable event described in section 4043(b)(7) has occurred, or

(4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

* * *

(b) Whenever the corporation makes a determination under subsection (a) with respect to a plan it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination is made pending the issuance of a decree under subsection (c) ordering the termination of the plan....

(c) If the corporation has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subection (b)) has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants and to avoid any further deterioration of the financial condition of the plan or any further increase in the liability of the fund.

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37 26 U.S.C.A. (I.R.C. 1954) 412.

38 26 U.S.C.A. (I.R.C. 1954) 6212.

39 26 U.S.C.A. (I.R.C. 1954) 4971(a).

. . . Upon granting a decree for which the corporation or trustee has applied under this subsection the court shall authorize the trustee appointed under subsection (b) (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle....

* * *

ALLOCATION OF ASSETS

Sec. 4044. (a) In the case of the termination of a defined benefit plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order: [paragraphs (1)-(6) omitted].

* * *

SUBTITLE D - LIABILITY

AMOUNTS PAYABLE BY THE CORPORATION

Sec. 4061. The corporation shall pay benefits under a plan terminated under this title subject to the limitations and requirements of subtitle B of this title. Amounts guaranteed by the corporation under section 4022 shall be paid by the corporation out of the appropriate fund.

LIABILITY OF EMPLOYER

Sec. 4062. (a) This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated, but does not apply— [exceptions omitted.]

(b) Any employer to which this section applies shall be liable to the corporation, in an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this title on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

* * *

RECOVERY OF EMPLOYER LIABILITY FOR PLAN TERMINATION

Sec. 4067. The corporation is authorized to make arrangements with employers who are liable under section 4062, 4063, or 4064 for payment of their liability, including arrangements for deferred payment on such terms and for such periods as the corporation deems equitable and appropriate.

H INTERNAL REVENUE CODE OF AUGUST 16, 1954

INTERNAL REVENUE CODE
SUBCHAPTER D
DEFERRED COMPENSATION, ETC
PART I - PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.
SUBPART A - GENERAL RULE

§401. Qualified pension, profit-sharing, and stock bonus plans.

(a) Requirements for Qualification.-A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of employees who are—

(A) officers,

(B) shareholders, or

(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(2)(A) and (C).

* * *

§411. Minimum vesting standards.—

(a) General Rule.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).

* * *

(d) Special Rules.—

* * *

(3) Termination or partial termination; discontinuance of contributions.—Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that—

(A) upon its termination or partial termination,

or

(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable....

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) Exemption From Taxation.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

INTERNAL REVENUE SERVICE
Ruling No. 71-91
1971 - 1 CB 116

A noncontributory pension plan that contains no funding arrangement but provides that the employer will pay the monthly pension directly to a retiree, does not meet the requirements of section 401(a) of the Code.

Rev. Rul. 71-91

A corporate employer established a noncontributory pension plan providing for a normal retirement benefit of $100 per month for each employee upon his retirement after the attainment of age 65. The plan provides that no contributions will be made on behalf of any employee prior to retirement. At retirement the employer will pay the monthly pension directly to the retiree. This type of arrangement is sometimes referred to as a "pay as you go" plan.

A plan may meet the requirements of section 401(a) of the Code only if contributions are used to establish a

trust of the type described in that section or to establish a custodial account of the type described in section 401(f) of the Code. For the purposes of sections 403(a) and 404(a)(2) of the Code, contributions may be used for the purchase of an annuity contract of the type described in those sections. Furthermore, for the purposes of sections 401, 402, 403, and 404 of the Code, contributions may be used for the purchase of face-amount certificates of the type described in section 401(g). In addition, in the case of bond purchase plans, contributions may be used for the purchase of retirement bonds of the type described in section 405(b) of the Code.

All of these plans are funded arrangements. Thus, a qualified plan must be a funded plan. It may not provide for direct payments by an employer to his employees, as in the case of the pay-as-you-go pension plan described in this case.

Accordingly, it is held that this plan does not meet the requirements of section 401(a) of the Code.

I.R.S. Pub. 778 (2-72), Part 2(b)

(b) Funded Plans

A qualified plan must be a funded plan. Contributions may be made to a trust or under a custodial account, or may be used to pay premiums on insurance contracts, or to purchase face-amount certificates or used to buy retirement bonds. A qualified plan does not provide for direct payments by an employer to his employees, as in the case of a pay-as-you-go pension plan. See Rev. Rul. 71-91, C. B. 1971-1, 116. However, employer contributions to or under a recognized funding medium may, under appropriate circumstances, be delayed pursuant to an established funding method. Thus, a qualified pension plan may provide that current contributions be made by employees only, but that the employer is obli-

gated to pay the full amount of the stipulated benefits to each retired employee-participant after the funds in the trust forming a part of such plan have been fully exhausted. See Rev. Rul. 54-152, C. B. 1954-1, 149. The employer may also make contributions in any year to substitute for the otherwise required employee contributions. Rev. Rul. 68-25, C. B. 1968-1, 151. It should be observed, however, that minimum funding requirements must be maintained even if contributions are made by employees only. See part 6(d) hereof.

I LEGISLATIVE HISTORY OF ERISA

[From the Congressional Record—House, Jan. 3, 1973.]

• • •

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

• • •

By Mr. Dent (for himself and Mr. Perkins):

H.R. 2. A bill to revise the Welfare and Pension Plans Disclosure Act; to the Committee on Education and Labor.

• • •

By Mr. Dent (for himself and Mr. Perkins):

H.R. 462. A bill to revise the Welfare and Pension Plan Disclosure Act; to the Committee on Education and Labor.

• • •

SAFEGUARDING PRIVATE PENSION PLANS

Mr. DENT. Mr. Speaker, I am pleased to submit to my colleagues and all others concerned about safeguarding the benefits of citizens who participate in private pension plans, two bills that I consider a "first step" toward our goal of securing retirement benefits earned during working years.

These measures are introduced today, on the first meeting of the 93rd Congress, to underscore the immediate need for congressional attention to the plight of workers who, for one reason or another, do not realize

the income to which they should be entitled upon retirement. I do not maintain that the two bills I put before the House today are the final answer to this complex problem, but they are the product of comprehensive studies in the field. It is my hope that they will serve as the vehicles by which we can renew our efforts to solicit constructive suggestions for reform of the private pension system, and fashion legislation which will eventually result in the enactment of meaningful safeguards for the rights of retirees.

It is my intention to call for hearings in Washington early next month before the General Subcommittee on Labor, and to press for early action on this issue.

[The texts of the bills as introduced follow:]

* * *

H.R. 462

* * *

PAYMENT OF INSURANCE

SEC. 204. (a) No plan insured under this title shall terminate without approval of the Secretary. The Secretary shall not approve a plan termination unless he is satisfied that the requirements of this Act and those of the Welfare and Pension Plans Disclosure Act have been complied with and that such termination is not designed to avoid or circumvent the purposes of this Act.

(b) As determined by the Secretary, subject to the conditions specified in section 202, the amount of insurance payable under the insurance program shall be the difference between the realized value of the plan's assets and the amount of vested liabilities under the plan.

RECOVERY

SEC. 205. (a) Where the employer or employers contributing to the terminating plan or who terminated the plan are not insolvent (within the meaning of section 1(19) of the Bankruptcy Act), such employer or employers shall be liable to reimburse the insurance program for any insurance benefits paid by the program to the beneficiaries of such terminated plan to the extent provided in this section.

(b) An employer, determined by the Secretary to be liable for reimbursement under subsection (a), shall be liable to pay a percentage of the terminated plan's unfunded vested liabilities equal to 100 per centum.

(c) The Secretary is authorized to make arrangements with employers, liable under subsection (a) for reimbursement of insurance paid by the Secretary including arrangements for deferred payment on such terms and for such periods as are deemed equitable and appropriate.

PENSION BENEFIT INSURANCE FUND

SEC. 206. (a) There is hereby created within the Treasury a separate fund for pension benefit insurance to be known as the Pension Benefit Insurance Fund (hereafter in this section called the fund) which shall be available to the Secretary without fiscal year limitation for the purposes of this title.

CALENDAR NO. 119

93d CONGRESS SENATE REPORT
1st SESSION No. 93-127

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1973

April 18, 1973.—Ordered to be printed

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S. 4]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

* * *

SECTION 210.—FUNDING REQUIREMENTS

The Committee believes that actuarially sound funding procedures are indispensable to effective implementation of the purposes of the Act. If employers never went out of business or terminated pension plans before they were completely funded, there would, no doubt, be no persuasive justification for funding standards aside from whatever tax considerations might be applicable. Nevertheless, employers do experience financial or economic difficulties or they undergo varying degrees of corporate reorganization, all of which can lead to premature termination of underfunded plans. A plan termination insurance program provides the essential safeguard

to the rights of workers who are trapped by these unforseen economic hazards but such a program cannot be made practical without being coupled to required standards of funding. To create a plan termination insurance program without appropriate funding standards would permit those who present the greatest risk in terms of exposure to benefit at the expense of employers who have developed conscientious funding programs. The funding standards contained in Section 210 are designed to lessen that unnecessary exposure by requiring every plan to be funded in a manner which will fully amortize unfunded liabilities in 30 years. 30 years was selected as representing more closely the funding period norm for most private plans. It is within the contemplation of the Committee that so-called "pay-as-you-go" or "terminal funded" plans are precluded under the requirements of this section.

* * *

SECTION 405.—RECOVERY

The Committee recognizes that in order to provide adequate protection to employees against loss of vested benefits owing to premature plan termination, it is necessary for the insurance program to cover all forms of plan termination regardless of the circumstances giving rise to the termination. The Committee also recognzed [sic] that some degree of employer liabiility was essential where the employer was not insolvent at the point of plan termination in order to preclude abuse by shifting the financial burden to the plan termination insurance program despite the fact that the employer had avaiable [sic] funds to continue funding the plan.

One approach to this problem would be to require financially responsible employer [sic] to, in effect, act as self-insurers for the unfunded vested liabilities and those who are not financially responsible to obtain plan termination insurance. This approach, which is supported by

precdent [sic] in the field of workmen's compensation, for example, was considered and rejected becuase [sic] of the potentially enormous liabilities invoved [sic]. To require the Secretary to evaluate the financial capabilities of particular employers to assume such potentially enormous liabilities might have an adverse effect on the employer's competitive position and on his continued healthy growth.

Having determined that participation in the plan termination insurance program was essential for all plans, and that some degree of employer liability was necessary, the question of the degree of such liability becomes important. The Committee had concern that if the degree of liability was absolute to the extent of the employer's assets, it might drive some employers to the brink of bankruptcy, impose substantial economic hardship, or discourage the establishment of plans or the reasonable liberalization of benefits.

Accordingly, the Committee endorsed a formula of employer liability which requires the employer to reimburse the plan termination insurance program for the total amount of insurance paid, but in no event greater than 50% of employer's net worth at time of plan termination.

In addition, as a result of plan termination field hearings held by the Labor Subcommittee, numerous instances were disclosed where acquiring companies that terminated pension plans failed to take over the liability for vested benefits owed to the employees of the predecessor company. Since this circumstance could also arise in connection with the reinsurance provision, it is necessary to strengthen the reinsurance provisions by requiring successors-in-interest to be liable for reimbursements owed by predecessor companies.

Calendar No. 361

93D CONGRESS, 1st Session } SENATE { REPORT No. 93-383

PRIVATE PENSION PLAN REFORM

REPORT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

TOGETHER WITH ADDITIONAL AND SUPPLEMENTAL VIEWS

ON

S. 1179

AUGUST 21, 1973.—Ordered to be printed
Filed under authority of the order of the Senate on August 1, 1973

U.S. GOVERNMENT PRINTING OFFICE
20-363 O WASHINGTON : 1973

• • •

Liability of employer.—Concern was expressed to the committee that in the absence of appropriate safeguards under an insurance system, an employer might establish or amend a plan to provide substantial benefits with the realization that its funding may be inadequate to pay the benefits called for. Such an employer might, it was argued, rely on the insurance as the backup which enables it to be more generous in promising pension benefits to meet labor demands than would be the case if it knew that the benefits would have to be paid for entirely out of the assets of the employer. On the other hand, it was clear to the committee that the imposition of heavy obligations on employers would discourage provisions for adequate pension plans.

To deal with these competing considerations, the committee determined to impose on the employer a limited liability to reimburse the insurance system for a portion of the payments that must be made by the insurance Corporation in satisfaction of its obligations if the employer's plan fails. Under the bill (sec. 461 of the bill), the employer generally is to be liable to reimburse the Corporation in an amount equal to the lesser of (1) one-tenth of the insurance Corporation's insurance liabilities on account of the plan failure or (2) one-half of the net worth of the employer.

• • •

Calendar No. 119

93d CONGRESS S. 4
1st SESSION

IN THE SENATE OF THE UNITED STATES

September 17, 1973

Ordered to lie on the table and to be printed

AMENDMENT
(IN THE NATURE OF A SUBSTITUTE)

Intended to be proposed by MR. NELSON (for himself, MR. LONG, MR. BENTSEN, and MR. BENNETT) to S. 4, a bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans, viz: Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) this Act may be cited as the "Retirement Income Security for Employees Act".

• • •

SEC. 462. LIABILITY OF EMPLOYER

(a) EMPLOYERS LIABLE.—This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated by the corporation, but does not apply—

(1) to an employer who maintained a plan with respect to which he paid the annual optional premium described in paragraphs (2)(C) and (3)(B) of section 403(b) for each of the 5 plan years immediately preceding the plan year during which the plan terminated unless the employer remains in business (as defined in subsection (f)), or

(2) to the extent of any liability arising out of the insolvency of a qualified insurance carrier (as defined in section 301(4) of this Act).

(b) AMOUNT OF LIABILITY.—Any employer to which this section applies shall be liable to the Corporation, in an amount equal to the lesser of—

(1) the amount finally determined under section 461, or

(2) 30 percent of the net worth of such employer determined as of the day 120 days prior to the date of termination, without regard to any liability under this section.

[From the Congressional Record—Senate, Sept. 18, 1973]

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

* * *

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. NELSON. Mr. President, I ask unanimous consent to have printed in the Record an analysis of the substitute amendment to S. 4, my amendment No. 496.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

* * *

S. 4 provided that insurable benefits could be covered by the insurance upon the effective date of the insurance title (one year after date of enactment of the bill), while S. 1179 would delay coverage for three years after that time in order to enable the insurance fund to be built up by collection of premiums. Under this amendment, all

plans would be covered after two years of premium collections—sooner if the insurance corporation decides before that time that it has enough funds to begin coverage earlier. Generally, premium taxes are to be payable by employers beginning in 1975. Therefore, coverage would generally begin not later than 1977.

A difference existed in the two bills as to the extent of the employer's liability to the insurance corporation to reimburse it for losses caused by its coverage of that employer's terminated plan. Under. S. 4 the liability would have been limited to 50 percent of the employer's net worth. S. 1179 limits liability to the lesser of 50 percent of the net worth or 10 percent of the loss. Under this amendment, the employer's contingent liability is limited to 100 percent of the loss up to 30 percent of his net worth. It is believed that this contingent liability will be sufficient to prevent employers from terminating plans to take advantage of the insurance for themselves and their employees.

This decision also permits the elimination of the "phasing-in" schedule of S. 1179, which would have permitted only gradual coverage of newly created plans and benefits.

93d CONGRESS 1st SESSION — HOUSE OF REPRESENTATIVES — Report No. 93-533

EMPLOYEE BENEFIT SECURITY ACT OF 1973

October 2, 1973.—Committeed [sic] to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

SUPPLEMENTAL, ADDITIONAL, AND INDIVIDUAL VIEWS

[To accompany H.R. 2]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass. The amendment substitutes all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

* * *

Section 405.—Recovery

The Committee recognizes that in order to provide adequate protection to employees against loss of vested benefits owing to premature plan termination, it is necessary for the insurance program to cover all forms of plan termination regardless of the circumstances giving rise to the termination. The Committee also recognized that some degree of employer liability was essential where the employer was not insolvent at the point of plan termination in order to preclude abuse by shifting the financial burden to the plan termination insurance program despite the fact that the employer had available funds to continue funding the plan.

One approach to this problem would be to require financially responsible employers to, in effect, act as self-insurers for the unfunded vested liabilities and those who are not financially responsible to obtain plan termination insurance. This approach, which is supported by precedent in the field of workmen's compensation, for example, was considered and rejected because of the

potentially enormous liabilities involved. To require the Secretary to evaluate the financial capabilities of particular employers to assume such potentially enormous liabilities might have an adverse effect on the employer's competitive position and on his continued healthy growth.

Having determined that participation in the plan termination insurance program was essential for all plans, and that some degree of employer liability was necessary, the question of the degree of such liability becomes important. The Committee had concern that if the degree of liability was absolute to the extent of the employer's assets, it might drive some employers to the brink of bankruptcy, impose substantial economic hardship, or discourage the establishment of plans or the reasonable liberalization of benefits.

Accordingly, the Committee endorsed a formula of employer liability which requires the employer to reimburse the plan termination insurance program for the total amount of insurance paid, but in no event greater than 50% of employer's net worth at time of plan termination.

[From the Congressional Record—House, Feb. 28, 1974]

EMPLOYEE BENEFIT SECURITY ACT OF 1973

Mr. DENT. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of this bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act.

The motion was agreed to.

• • •

Mr. PRICE of Texas. Mr. Chairman, responsible and comprehensive pension reform is necessary to insure that every American working person covered by a pen-

sion plan can depend upon that plan to pay benefits to which that person is entitled after retirement.

The goals of the legislation before us are to extend pension plan coverage to more working people, to assure employees equitable pension treatment and benefits, and to protect employees from loss of retirement benefits due to risk of bankruptcy, merger, or reasonable job shifts. While we are considering these changes, we must keep in mind that if Federal pension regulations become too burdensome for employers, those employers may be encouraged to choose not to set up a pension plan for their employees. After all, these plans are voluntary, and I would strongly oppose any Federal requirement to provide mandatory pension plans in private business.

We must, therefore, be certain that the legislation we enact will accomplish the goals we desire without rendering harm to working Americans by actually discouraging company pension plans.

• • •

Also, the bill provides for a complicated "plan termination insurance" system which imposes new employer liabilities for unfunded claims on the pension fund of up to "50 percent of the net worth" of the employer. This provision would have a devastating impact on the credit rating of many firms. This is a drastic move which requires more study and I would support reconsideration of this provision of the bill.

• • •

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2) to provide for pension reform submit the fol-

lowing joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment. The conference has agreed to a substitute for both the Senate amendment and the House bill. The statement following the table of contents explains the principal differences between the substitute agreed to in conference and the House and Senate bills.

• • •

Employer liability

Both the House bill and the Senate amendment required employer liability for insurance payments made by the corporation because of terminations of the employers' plans. The House bill set a limit on employer liability of 50 percent of the employer's net worth, as compared with 30 percent under the Senate amendment. In addition, the House bill did not impose any liability in the case of multiemployer plans.

As previously discussed, both the House bill and the Senate amendment authorized the corporation to insure employers against employer liability, under different sets of conditions.

Under the conference substitute, employer liability is required for employers in both single-employer and multiemployer plans. The employer liability is limited to 30 percent of net worth, with net worth valued as of a date chosen by the corporation, but not more than 120 days prior to the termination.

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[From the Congressional Record—
Senate, Aug. 22, 1974]

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EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974—CONFERENCE REPORT

Mr. WILLIAMS. Mr. President, I submit a report of the committee of conference on H.R. 2, and ask for its immediate consideration.

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Mr. WILLIAMS. Mr. President, I am happy to report that after long and numerous meetings of the conferees on H.R. 2, we are able to bring before the Senate a conference agreement which has been unanimously adopted, and which, for the first time, will safeguard the pension expectations of American workers.

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TERMINATION INSURANCE

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Since there would be a possibility of abuse by solvent employers who terminate a plan and shift the financial burden to the insurance program, notwithstanding their own financial ability to continue funding the plan, the conference bill imposes liability on employers whose plans terminate, to reimburse the program for benefits paid by the corporation. This liability extends to 30 percent of the employer's net worth. However, the bill does provide that employers will be permitted to exercise an option to obtain additional insurance to cover such contingent liability.

J LABOR AGREEMENT

AGREEMENT ENTERED INTO

BETWEEN

HEPPENSTALL COMPANY

AND

UNITED STEELWORKERS OF AMERICA

THIS AGREEMENT, dated August 25, 1975, is by and between the HEPPENSTALL COMPANY, for its plant located at Pittsburgh, Pennsylvania, or its successor or successors, (hereinafter referred to as the "Company") and the UNITED STEELWORKERS OF AMERICA, or its successor or successors (hereinafter referred to as the "Union"). Any agreement, whether written or oral, which is not set forth in this Agreement or as a Supplemental Letter of Intent thereto, shall be null and void and of no further force and effect on and after August 25, 1975.

SECTION I

INTENT AND PURPOSE

The purpose of the Company and the Union in entering into this labor contract is to set forth their agreement on rates of pay, hours of work, and other conditions of employment so as to promote orderly and peaceful relations with the employees and to achieve uninterrupted operations in the plants.

* * *

SECTION VI

ADJUSTMENT OF GRIEVANCES

PURPOSE

The provisions of this Agreement constitute the sole procedure for the processing and settlement of any claim by an employee or the Union of violation by the Company of this Agreement. As representative of the employees, the Union may process grievances through the grievance procedure, including arbitration in accordance with the Agreement or adjust or settle same. The procedures under this article are available to the Union or the Company for the presentation and settlement of grievances arising under the terms of this Agreement. Any grievance initiated by the Company shall be introduced in Step 2 of the Grievance Procedure. Should differences arise between the Company and the Union as to the interpretation of, application of, or compliance with, the specific provisions of this Agreement, or as to any question in relation to wages, hours of work, or other working conditions of any employee, there shall be no slowdowns, interruptions or impeding of work, work stoppages, strikes or walkouts on account of such difference, but an earnest effort shall be made to settle such differences in the following manner.

* * *

ARBITRATION

Except as otherwise provided in this Agreement and subject to the limitations contained in this Agreement, if the grievance is not settled under the foregoing procedure, then, the International Representative may, within ten (10) calendar days after the receipt of the Step 3 answer, request in writing that the matter be submitted to arbitration. Within three (3) days after notification has been received, that the answer in the 3rd Step is not

satisfactory, a meeting will be held to select an arbitrator. In the event that the International Union and the Company are unable to agree on an impartial arbitrator within fifteen (15) days from the receipt of the request for arbitration, the parties shall request the Federal Mediation and Conciliation Service, to submit a list of seven (7) recognized arbitrators. The Company shall remove three (3) names and the Union shall remove three (3) names and the remaining individual not so stricken shall be the arbitrator. The arbitrator's decision shall be final and binding on both parties. The compensation and expenses of the arbitration shall be borne equally by the Company and the Union.

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HEPPENSTALL COMPANY

MEMORANDUM OF UNDERSTANDING

RE: PENSIONS

The Company agrees to the following changes which will be made in the pension benefits effective on the dates shown.

1. Effective August 16, 1976 pensions shall become vested after 10 years of continuous service for employees terminating on or after that date.

[changes 2-9 omitted]

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K PENSION AGREEMENT

AGREEMENT dated (effective August 16, 1976 between HEPPENSTALL COMPANY, or its successors (hereinafter referred to as the "Company") and UNITED STEELWORKERS OF AMERICA, or its successors (hereinafter referred to as the "Union").

SECTION 1. INTRODUCTION

DEFINITIONS

1.1 Wherever used herein

(a) "Basic Agreement" means the labor agreement between the Company and the Union (applicable to the hourly rated production and maintenance employees at the Pittsburgh, Pennsylvania plant, or any successor agreement between the Company and the Union which is, during the life of this Pension Agreement, applicable to such employees;

• • •

(c) "participant" means any Employee who shall have had at least one year of continuous service and shall have attained the age of 25 years and who, from time to time during the period in which this Agreement is effective, is accruing continuous service; where so indicated in the context, "participant" also refers to a person who is no longer accruing continuous service but who had attained pension eligibility under this Agreement at the date he ceased to accrue continuous service, including a person who is retired and is receiving or is entitled to receive pension benefits under this Agreement;

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(e) "Company" means the Heppenstall Company and covers the plant located at Pittsburgh, Pennsylvania

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PROVISION OF BENEFITS:

1.3 Subject to the corporate action required to provide the pension benefits and to the Company's obtaining and/or retaining approval by the Commissioner of Internal Revenue of the trust or trusts heretofore or hereafter established under the pension plan of the Company as changed to provide the pension benefits set forth in this Agreement, as exempt under the applicable provisions of the Internal Revenue Code or successors to them, the following pension benefits shall be provided by the Company or caused to be provided by the Company for the participants.

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SECTION 8. PENSION TRUST

8.1 For the purpose of supplying the pension benefits herein provided, the Company may establish or cause to be established, a pension trust or trusts or may utilize any existing trust or trusts heretofore established by or on behalf of the Company. The Company is free to determine the manner and means of making provision for funding and paying the pension benefits set forth in this Agreement.

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SECTION 10. GENERAL PROVISIONS

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CONTINUATION OF BENEFIT

10.2 Any benefit properly payable pursuant to this Agreement shall continue to be payable, notwithstanding the termination or expiration of this Agreement.

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L AMENDMENT TO PENSION AGREEMENT

PENSION AGREEMENT

AGREEMENT dated (effective August 16, 1976) between Heppenstall Company, or its successors (hereinafter referred to as the "Company") and United Steelworkers of America, or its successors (hereinafter referred to as the "Union").

As the IRS has required that certain revisions be made to that certain Pension Agreement made and entered into in September, 1977, and made effective as of August 16, 1976, by and between the Union and the Company to assure that the terms of the said Pension Agreement satisfy the requirements of the Internal Revenue Code, the Union and the Company agree that the said Pension Agreement be revised as follows:

* * *

5. Section 10 of the said Pension Agreement is hereby amended to add a new sentence to paragraph 10.2 at the end thereof which reads as follows:

In the event that this Agreement is terminated, in whole or in part, the rights of any participant with respect to whom such termination shall have occurred shall, from the date of such termination or partial termination, be fully vested and non-forfeitable, subject to divestment by reason of death or operation of law, in the benefits established under the Agreement as of the date such termination or partial termination is effective to the extent those benefits are funded by the applicable assets of the trust fund, as determined in accordance with the terms of the trust or trusts established by the Company in accordance with the provisions of Section 8 of this Agreement.

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